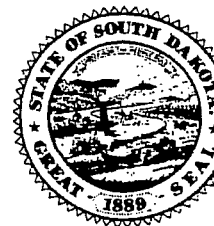




# *South Dakota* **Public Utilities Commission**



State Capitol Building, 500 East Capitol Avenue, Pierre, South Dakota 57501-5070

November 2, 2000

Clerk of the Court of Appeals  
United States Court of Appeals  
for the District of Columbia Circuit  
333 Constitution Avenue N.W.  
Washington, DC 20001

Capitol Office  
Telephone (605)773-3201  
FAX (605)773-3809

Transportation/  
Warehouse Division  
Telephone (605)773-5280  
FAX (605)773-3225

Consumer Hotline  
1-800-332-1782

TTY Through  
Relay South Dakota  
1-800-877-1113

Internet Website  
[www.state.sd.us/puc/](http://www.state.sd.us/puc/)

♦  
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Chairman  
Pam Nelson  
Vice-Chairman  
Laska Schoenfelder  
Commissioner

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Mary Healy  
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Dave Jacobson  
Amy Kayser  
Jennifer Kirk  
Bob Knadle  
Delaine Kolbo  
Charlene Lund  
Gregory A. Rislov  
Keith Senger  
Rolayne Ailts Wiest  
♦

Re: United States Telecom Association v.  
Federal Communications Commission  
and United States of America  
No. 00-1428

Dear Clerk:

Enclosed for filing you will find original and four copies of Motion for Leave to Intervene, proposed Order Granting South Dakota Public Utilities Commission Leave to Intervene and original Certificate of Service with reference to the above captioned matter. Also enclosed is my check in the amount of \$100.00 for the filing fee.

Very truly yours,

Rolayne Ailts Wiest  
Special Assistant Attorney General

RAW:dk  
Enc.

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES TELECOM ASSOCIATION,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION AND UNITED STATES OF  
AMERICA,

Respondents.

No. 00-1428

MOTION FOR LEAVE TO INTERVENE

Pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348 and Rule 15(d) of the Federal Rules of Appellate Procedure, the South Dakota Public Utilities Commission (SDPUC), by its attorney, hereby moves, as a matter of right, for leave to intervene in the above-captioned proceeding. In support of this motion, the SDPUC states as follows:

On August 10, 2000, the Federal Communications Commission ("FCC" or "Commission") issued a "Declaratory Ruling," *In the Matter of Federal-State Joint Board on Universal Service; Western Wireless Corporation Petition for Preemption of an Order of the South Dakota Public Utilities Commission*, CC Docket No. 96-45, FCC 00-248 (rel. Aug. 10, 2000) (the "Declaratory Ruling"), in which the Commission provided guidance regarding whether Section 214(e)(1) of the Communications Act requires a common carrier to provide supported services throughout a service area prior to being designated an eligible telecommunications carrier. On October 5, 2000, the United States Telecom Association filed a Petition for Review with this Court alleging that the Declaratory Ruling is (1) arbitrary, capricious, an abuse of discretion, and otherwise not

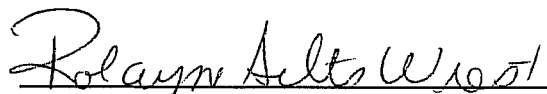
in accordance with law; (2) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (3) without observance of procedure required by law; and (4) unsupported by substantial evidence.

The SDPUC is a party in interest to this proceeding. The SDPUC is a named party in the Declaratory Ruling and directly participated in the Commission's proceeding that resulted in the issuance of the Declaratory Ruling. Therefore, as a "party in interest in the proceeding before the agency whose interests will be affected if [the] order of the agency is or is not enjoined, set aside, or suspended" (28 U.S.C. § 2348), the SDPUC is entitled to intervene as a matter of right in this case.

Accordingly, the SDPUC submits this timely Motion to Intervene in this proceeding and any other proceeding consolidated therewith pursuant to 47 U.S.C. § 402(e), 28 U.S.C. § 2348, Fed. R. App. P. 15 and D.C. Circuit Rule 15(b).

WHEREFORE, the SDPUC respectfully requests Leave to Intervene in this matter.

Dated this 2<sup>nd</sup> day of November, 2000.



Rolayne Alts Wiest  
Special Assistant Attorney General for the  
State of South Dakota  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501  
Telephone (605) 773-3201

Judge,  
United States Court of Appeals  
for the District of Columbia Circuit

## CERTIFICATE OF SERVICE

I hereby certify that on this 2<sup>nd</sup> day of November, 2000, I caused copies of the foregoing Motion for Leave to Intervene to be sent by U. S. mail, first class postage prepaid to the following:

Chairman William Kennard  
Federal Communications Commission  
445 Twelfth Street SW  
The Portals, Room 8-B201  
Washington, DC 20554

Andrew S. Fishel  
Federal Communications Commission  
445 Twelfth Street SW  
The Portals, Room 1-C152  
Washington, DC 20554

Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
445 Twelfth Street SW  
The Portals, Room 8-A302  
Washington, DC 20554

Christopher Wright  
General Counsel  
Federal Communications Commission  
The Portals, Room 8C-755  
445 Twelfth Street SW  
Washington, DC 20554  
Attorney for Respondents

Commissioner Gloria Tristani  
Federal Communications Commission  
445 Twelfth Street SW  
The Portals, Room 8-C302  
Washington, DC 20554

John Ingle  
Federal Communications Commission  
The Portals, Room 8C-755  
445 Twelfth Street SW  
Washington, DC 20554  
Attorney for Respondents

Commissioner Susan Ness  
Federal Communications Commission  
445 Twelfth Street SW  
The Portals, Room 8-B115  
Washington, DC 20554

Joel Marcus  
Federal Communications Commission  
The Portals, Room 8A-816  
445 Twelfth Street SW  
Washington, DC 20554  
Attorney for Respondents

Commissioner Michael Powell  
Federal Communications Commission  
445 Twelfth Street SW  
The Portals, Room 8-A204  
Washington, DC 20554

The Honorable Janet Reno  
U.S. Dept. of Justice  
Patrick Henry Building  
Appellate Section  
Room 10535  
610 D Street NW  
Washington, DC 20530-0001  
Attorney for Respondents

Dorothy Attwood  
Chief, Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street SW  
Washington, DC 20554

Commissioner Laska Schoenfelder  
South Dakota Public Utilities Commission  
500 East Capitol Street, State Capitol  
Pierre, SD 57501-5070

Chairman James A. Burg  
South Dakota Public Utilities Commission  
500 East Capitol Street, State Capitol  
Pierre, SD 57501-5070

William Bullard, Jr. Executive Director  
South Dakota Public Utilities Commission  
500 East Capitol Street, State Capitol  
Pierre, SD 57501-5070

Steven R. Beck  
Qwest Communications Int'l. Inc.  
1801 California Street, Suite 3800  
Denver, CO 80202  
Counsel for Qwest Communications  
International, Inc.

Marilyn Showalter  
Chairwoman  
Washington Utilities &  
Transportation Commission  
1300 S. Evergreen Park Drive SW  
Olympia, WA 98504

Jeffrey D. Goltz  
Office of Attorney General  
State of Washington  
P. O. Box 40128  
Olympia, WA 98504-0128  
Counsel for Washington Utilities &  
Transportation Commission

Michele C. Farquhar  
David L. Sieradzki  
Ronnie London  
Hogan & Hartson, LLP  
555 13th Street NW  
Washington, DC 20004-1109  
Counsel for Competitive Universal  
Service Coalition and Western  
Wireless Corporation

M. Robert Sutherland  
Richard M. Sbaratta  
BellSouth Corporation, Suite 1700  
1155 Peachtree Street NE  
Atlanta, GA 30309-3610

Howard J. Symons  
Mintz, Levin, Cohn, Ferris, Glovsky &  
Popeo  
701 Pennsylvania Ave. NW, Suite 900  
Washington, DC 20004  
Counsel for AT&T

Mark C. Rosenblum  
Stephen Garavito  
AT&T Corp.  
295 N. Maple Avenue, Room 1131M1  
Basking Ridge, NJ 07920

Douglas I. Brandon  
AT&T Wireless Services  
1150 Connecticut Ave NW, Suite 400  
Washington, DC 20036

David Nace  
BLF Ratnavale  
Lukas, Nace, Guitierrez & Sachs  
1111 19th Street NW, Suite 1200  
Washington, DC 20036  
Counsel for Rural Cellular Corporation

Gene DeJordy  
Western Wireless Corporation  
3650 131st Avenue SE, Suite 400  
Bellevue, WA 98006

Lolita D. Smith  
Michael F. Altschul  
Randall A. Coleman  
Cellular Telecommunications Industry  
Association  
1250 Connecticut Ave. NW, Suite 800  
Washington, DC 20036

Geoffrey A. Feiss  
Montana Telecommunications Assn.  
208 North Montana Ave., Suite 207  
Helena, MT 59601

Richard D. Coit  
South Dakota Independent Telephone  
Coalition, Inc.  
P. O. Box 57  
Pierre, SD 57501

Benjamin H. Dickens, Jr.  
Mary J. Sisak  
Blooston, Mordkofsky, Jackson & Dickens  
2120 L Street NW, Suite 300  
Washington, DC 20037  
Counsel for South Dakota Independent  
Telephone Coalition, Inc.

Gail L. Polivy  
GTE Service Corporation  
1850 M Street NW, Suite 1200  
Washington, DC 20036

John F. Raposa  
GTE Service Corporation  
600 Hidden Ridge, MS HQE935J27  
Irving, TX 75038

NRTA  
One Massachusetts Ave. NW, Suite 800  
Washington, DC 20001  
Member of Rural Telephone Coalition:  
Coalition of Rural Telephone Companies

L. Marie Guillory  
Jill Canfield  
NTCA  
4121 Wilson Boulevard, 10th Floor  
Arlington, VA 22203  
Member of Rural Telephone Coalition:  
Coalition of Rural Telephone Companies

Kathleen A. Kaercher  
Stuart Polikoff  
OPASTCO  
21 DuPont Circle NW, Suite 700  
Washington, DC 20036  
Member of Rural Telephone Coalition:  
Coalition of Rural Telephone Companies

Jeannie Su  
525 Park Street, Suite 500  
St. Paul, MN 55103-2106  
Attorney for Minnesota Department of  
Public Service/Department of Commerce

Edward Fagerlund  
Telecommunications Unit  
Attorney for Minnesota Department of  
Public Service/Department of Commerce  
121 Seventh Place East, Suite 200  
St. Paul, MN 55101-2145

Angela Giancarlo  
Personal Communication Industry  
Association  
500 Montgomery Street, Suite 700  
Alexandria, VA 22314-1561

Jonathan Askin  
General Counsel  
Association for Local  
Telecommunications Services  
888 17th Street NW, Suite 900  
Washington, DC 20036

Peter M. Connolly  
Holland & Knight, LLP  
2100 Pennsylvania Ave. NW, Suite 400  
Washington, DC 20037  
Counsel for United States Cellular  
Corporation

David Cosson  
John B. Adams  
Kraskin, Lesse & Cosson  
2120 L Street NW, Suite 520  
Washington, DC 20037  
Counsel for Coalition of Rural  
Telephone Companies and  
Project Telephone Company  
Range Telephone Cooperative

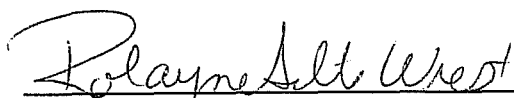
Stephen L. Goodman  
William F. Maher, Jr.  
Richard T. White, Jr.  
Halprin, Temple, Goodman & Maher  
555 12th Street NW, Suite 950 North  
Washington, DC 20004  
Counsel for United States Telecom  
Association

Jan M. Sebbly  
Michael A. Bosh  
Pringle & Herigstad, PC  
P. O. Box 1000  
Minot, ND 58702-1000

Julie E. Rones  
Lawrence E. Sarjeant  
John Westerman Hunter  
United States Telephone Association  
1401 H Street NW, Suite 600  
Washington, DC 20005

John B. Adams  
Citizens Utilities Company  
1400 16th Street NW, Suite 500  
Washington, DC 20036

Dated this 2<sup>nd</sup> day of November, 2000.



Rolayne Ails Wiest  
Special Assistant Attorney General for the  
State of South Dakota  
South Dakota Public Utilities Commission  
500 East Capitol  
Pierre, SD 57501